

REMARKS/ARGUMENTS

Favorable reconsideration of this application is requested in view of the above amendments and in light of the following remarks and discussion.

Claims 1-58 are pending. Claims 1, 2, 7, 9, 11, 14, 15, 21, 24, 26, and 48 are amended. Support for the amendment to Claims 1, 26, and 48 can be found in numbered paragraph [0056] of the published specification and in Fig. 3, for example. Support for the amendments to Claims 2, 7, 9, 11, 14, 15, 21, and 24 is self-evident. No new matter is added.

In the outstanding Office Action, the drawings were objected to as not showing a length of a stem substantially equal to a height of a sleeve and as not showing a “bottom cap.” Claim 24 was objected to for reciting “said cap” instead of “said cup.” Claims 7, 8, 11, and 56 were rejected under 35 U.S.C. § 112, second paragraph as indefinite. Claims 1-11, 15, 20, 22-25, 48, 49, 52, 53, 57, and 58 were rejected under 35 U.S.C. § 102(b) as anticipated by the apparatus shown in Figs. 1 and 2A-2D of Wang (U.S. Patent No. 5,813,421, herein “Wang”). Claims 26-36, 38, 39, 46-54, and 56-58 were rejected under 35 U.S.C. § 102(b) as anticipated by the apparatus shown in Figs. 3-4 of Wang. Claims 1, 2, 7, 11, 12, 13, 22, 23, and 25 were rejected under 35 U.S.C. § 102(b) as anticipated by Holloway (U.S. Patent No. 6,227,733, herein “Holloway”). Claim 21 was rejected under 35 U.S.C. § 103(a) as obvious over Wang in view of Kim (U.S. Patent No. 6,224,281, herein “Kim”). Claims 14, 15, and 20 were rejected under 35 U.S.C. § 103(a) as obvious over Holloway in view of Wang. Claim 21 was rejected under 35 U.S.C. § 103(a) as obvious over Holloway in view of Kim. Claims 16-19, 37, 40-45, and 55 were indicated as reciting allowable subject matter.

Applicant notes with appreciation the indication that Claims 16-19, 37, 40-45, and 55 recite allowable subject matter.

THE OBJECTIONS TO THE DRAWINGS AND CLAIMS ARE OVERCOME AS
FOLLOWS:

Regarding the objection to the drawings as not showing the length of a stem as substantially equal to a height of a sleeve, Applicant respectfully submits that the proportions of the features shown in the figures need not be depicted in precise scale. MPEP § 2125 states:

**PROPORTIONS OF FEATURES IN A DRAWING ARE
NOT EVIDENCE OF ACTUAL PROPORTIONS WHEN
DRAWINGS ARE NOT TO SCALE**

When the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value. See *Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000) (The disclosure gave no indication that the drawings were drawn to scale. “[I]t is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue.”). However, the description of the article pictured can be relied on, in combination with the drawings, for what they would reasonably teach one of ordinary skill in the art.¹

Accordingly, if a person of ordinary skill in the art would understand the features of the drawings, it is not necessary that the drawings themselves be drawn to scale. Applicant notes that numbered paragraph [0047] of the published specification clearly states that the length of the stem is substantially equal to a height of the walls forming the sleeve. Applicant further respectfully submits that Fig. 1a in combination with paragraph [0047] describes the feature of the length of the stem as equal to a height of the sleeve in sufficient detail for a person of ordinary skill in the art to understand this feature. Accordingly, Applicant respectfully requests that the objection to the drawings as not showing a length of a stem equal to a height of a sleeve be withdrawn.

¹ Although Chapter 2100 of the MPEP relates to patentability, Applicant respectfully submits that the reasoning applied in *Hockerson-Halberstadt, Inc. v. Avia Group, Int'l* applies in the case of Applicant's drawings as well as in the case of prior art asserted against an application.

Regarding the objection to the drawings as not showing a bottom cap, Claim 21 is amended to delete any reference to a bottom cap. Accordingly, Applicant respectfully submits that the objection to the drawings as not showing every feature recited in the claims is overcome.

Regarding the objection to Claim 24 as reciting "said cap" instead of "said cup," Claim 24 is amended to recite "said cup." Accordingly, Applicant respectfully submits that the objection to Claim 24 is overcome.

THE REJECTIONS OF CLAIMS 7, 8, 11, AND 56 AS INDEFINITE ARE
OVERCOME

Regarding the rejection of Claims 7, 8, and 11 for reciting "substantially equal," Claims 7, 8, and 11 are amended to delete the word "substantially." Accordingly, Applicant respectfully submits that the rejection of Claims 7, 8, and 11 as indefinite is overcome.

Regarding the rejection of Claim 56 as indefinite, that rejection is respectfully traversed by the present response.

Claim 56 recites:

A packaging and dispensing device according to claim 48, wherein said at least one lug is disengaged from said helical groove when said cup is in said uppermost position.

Accordingly, the lug disengages from the helical groove. However, as recited in independent Claim 48, from which Claim 56 depends, the lug does not pass through the aperture, and the cup does not move beyond its designated uppermost position.

The outstanding Office Action appears to imply that the features recited in Claim 56 are incompatible with the feature recited in Claim 48 noted above.

Applicant respectfully submits that the features recited in dependent Claim 56 are not incompatible with the features recited in independent Claim 48. Rather, as discussed in the

specification, when the cup is in an upper position, a protuberance will push the stem inward to a certain degree. However, even when the stem is pushed back, the lug cannot pass through the aperture in the sleeve. As discussed in numbered paragraphs [0056]-[0059], when the lug is disengaged from the helical groove, the transverse cross-section taken at the level of the lug is larger than the cross-section defined by the inner circumference of the aperture. Therefore, the lug can be disengaged from the helical groove and even though the lug has not passed through the aperture. Thus, the features recited in Claim 56 do not conflict with the features recited in independent Claim 48 from which Claim 56 depends. Accordingly, Applicant respectfully submits that the rejection of Claim 56 as indefinite is overcome.

THE REJECTION OF CLAIMS 1-11, 15, 20, 22-25, 48, 49, 52, 53, 57, and 58 AS
ANTICIPATED BY WANG IS OVERCOME

Regarding the rejection of Claims 1-11, 15, 20, 22-25, 48, 49, 52, 53, 57, and 58 as anticipated by Wang, that rejection is respectfully traversed by the present response. Applicant understands that Claims 1-11, 15, 20, 22-25, 48, 49, 52, 53, 57, and 58 are rejected as anticipated by the apparatus shown in Figs. 1 and 2A-2D of Wang and that Claims 26-36, 38, 39, 46-54, and 56-58 are rejected as anticipated by the apparatus shown in Figs. 3 and 4 of Wang. Accordingly, Applicant addresses the rejection based on Figs. 1 and 2A-2D first.

Amended independent Claim 1 recites:

A packaging and dispensing device for a product,
including:
a hollow base having a cylindrical inner wall,
a cup which accommodates the product,
a sleeve which is positioned at least partially above the
base, wherein the sleeve is rotatable relative to the base,
wherein the cup moves axially inside the sleeve in response to
rotation of the sleeve relative to the base, and further wherein
the cup is rotatably coupled to the sleeve, such that the cup
rotates when the sleeve rotates,
wherein the cup is formed at the end of a stem, and
wherein the stem has at least one lug in proximity to a free end

of said stem, and wherein said at least one lug engages with a helical groove in the cylindrical inner wall of the base, and further wherein said lug is resiliently supported by the stem on a tab which forms an obtuse angle with a portion of the stem to which the tab is attached so as to be capable of disengaging from the groove at least at one end of the groove, and wherein the sleeve comprises means to limit the travel of the cup.

Accordingly, a stem extends from a bottom of a cup. A tab at one end of the stem forms an obtuse angle with a first end of the stem. A lug is disposed on the tab.

One benefit of the above-described arrangement is that the tab itself is able to flex inward and outward from an axis of rotation of the stem so as to engage or disengage with a helical groove as desired without permitting the lugs to pass through the aperture or placing undue stress on the flexing portion of the tab.

The outstanding Office Action points to component (16) of Wang for the feature of a stem and points to the two posts (12c) and (12d) for the feature of at least one lug.²

Applicant respectfully submits that the part of the component (16) to which the posts (12c) and (12d) are attached is perfectly straight and aligned with the remainder of the screw-cup member (12). As further shown in Fig. 1, the slot (12e), which splits the screw-cup member (12) separates the screw-cup member along its axis. Thus, the screw-cup member (12) is merely a tube with a slot (12e) formed in one end and does not include tabs, much less tabs forming an **obtuse angle** with a portion of a stem to which the tabs are attached as recited in amended independent Claim 1. Accordingly, Applicant respectfully submits that amended independent Claim 1 patentably distinguishes over Wang for at least the reasons discussed above.

Independent Claim 48 is amended to recite substantially similar features to those discussed above regarding amended independent Claim 1. Accordingly, Applicant

² Outstanding Office Action, page 4.

respectfully submits that amended independent Claim 48 patentably distinguishes over Wang for at least the same reasons as amended independent Claim 1 does.

Claims 2-11, 15, and 22-25 depend from amended independent Claim 1. Claims 49, 52, 53, 57, and 58 depend from amended independent Claim 48. Accordingly, Applicant respectfully submits that Claims 2-11, 15, 20, 22-25, 49, 52, 53, 57, and 58 patentably distinguish over Wang for at least the same reasons as amended independent Claims 1 and 48 do.

THE REJECTION OF CLAIMS 26-36, 38, 39, 46-54, and 56-58 AS ANTICIPATED
BY WANG IS OVERCOME

Regarding the rejection of Claims 26-36, 38, 39, 46-54, and 56-58 as anticipated by the apparatus described in Wang, Figs. 3-4, that rejection is respectfully traversed by the present response.

Amended independent Claim 26 recites:

A packaging and dispensing device for a product comprising:
a base having at least one helical groove associated therewith;
a cup within which the product is disposed;
a sleeve which is at least partially disposed above the base, and
wherein said sleeve is rotatable relative to said base, said sleeve including
a portion having a first cross-section; and
a stem extending from said cup, said stem having a first end
coupled to said cup and a second end, and wherein at least one lug is
disposed on a tab on said stem proximate said second end, said tab
forming an obtuse angle with the first end of the stem,
wherein said stem extends through said portion of said base and
said stem is movable axially through said portion, and further wherein said
first cross-section is arranged with respect to a cross-section of said stem
at a location between said at least one lug and said first end of said stem
such that said portion of said sleeve is coupled to said stem whereby upon
rotation of said sleeve said stem rotates to thereby rotate said cup, and
further wherein said at least one lug does not pass through said portion of
said sleeve thereby limiting axial movement of said stem and said cup, and
wherein said at least one lug engages with said helical groove such
that as the sleeve is rotated relative to said base, said at least one lug
moves along said helical groove to cause axial movement of said stem and
said cup with respect to said sleeve.

Accordingly, the stem extends from the cup. The stem has a first end coupled to the cup. The stem has a second end on which a lug is disposed on a tab. The tab forms **an obtuse angle** with the first end of the stem.

As discussed above, the particular arrangement of the tab and stem described above provides a reliable structure for flexing the stem such that the lugs can engage the helical groove while also being able to disengage from the helical groove as necessary without putting undue stress on any particular part of the stem and without passing through the aperture.

The outstanding Office Action relies on the helical protrusion (24e) for the feature of a lug.³ However, Applicant respectfully submits that the protrusion (24e) is disposed directly on the screw (24) and not on a tab that forms an obtuse angle with the screw (24). Nowhere in Wang is a tab forming an obtuse angle with a stem portion disclosed as recited in amended independent Claim 26. Accordingly, Applicant respectfully submits that amended independent Claim 26 patentably distinguishes over Wang for at least the reasons discussed above.

Amended independent Claim 48 also recites a tab forming an obtuse angle with an end of the stem, and that the lug is disposed on the tab. Accordingly, Applicant respectfully submits that amended independent Claim 48 patentably distinguishes over Wang for at least the reasons discussed above regarding amended independent Claim 26.

Claims 27-36, 38, 39, 46, and 47 depend, directly or indirectly from amended independent Claim 26. Claims 49-54, and 56-58 each depend, directly or indirectly, from amended independent Claim 48. Accordingly, Applicant respectfully submits that Claims 27-36, 38, 39, 46, 47, 49-54, and 56-58 patentably distinguish over Wang for at least the reasons discussed above regarding amended independent Claims 26 and 48.

³ Outstanding Office Action, page 6.

CLAIMS 1, 2, 7, 11, 12, 13, 22, 23, AND 25 PATENTABLY DISTINGUISH OVER
HOLLOWAY

Regarding the rejection of Claims 1, 2, 7, 11, 12, 13, 22, 23, and 25 as anticipated by Holloway, that rejection is respectfully traversed by the present response.

As discussed above, amended independent Claim 1 recites that a tab forms an obtuse angle with a portion of a stem to which the tab is attached. A lug is supported on the tab.

The outstanding Office Action points to an elevator stem (56) for the feature of a stem and points to lugs (66) for the feature of at least one lug as recited in independent Claim 1.⁴ As shown in Fig. 2 of Holloway, the lugs (66) are directly disposed on the exterior wall (65) of the stem. The lugs (66) are not disposed on tabs, much less tabs that form obtuse angles with the stem (56). Rather, the lugs themselves form perpendicular angles with the stem (56) and tabs are not disclosed by Holloway. Therefore, Holloway cannot disclose tabs forming obtuse angles with the stem. Rather, the stem (56) is straight over its entire length. Holloway is devoid of any disclosure regarding a lug disposed on a tab that forms an obtuse angle with a portion of a stem to which the tab is attached. Accordingly, Applicant respectfully submits that amended independent Claim 1 patentably distinguishes over Holloway for at least the reasons discussed above.

Claims 2, 7, 11, 12, 13, 22, 23, and 25 depend, directly or indirectly, from amended independent Claim 1. Accordingly, Applicant respectfully submits that Claims 2, 7, 11, 12, 13, 22, 23, and 25 patentably distinguish over Holloway for at least the same reasons as amended independent Claim 1 does.

⁴ Outstanding Office Action, page 7.

ALL THE PENDING CLAIMS PATENTABLY DISTINGUISH OVER ANY
REASONABLE COMBINATION OF THE CITED REFERENCES

Regarding the rejection of Claim 21 as obvious over Wang in view of Kim, that rejection is respectfully traversed by the present response.

Claim 21 depends from amended independent Claim 1 and patentably distinguishes over Wang for at least the same reasons amended independent Claim 1 does.

Kim fails to remedy the deficiencies discussed above regarding Wang. Instead, Kim, as shown in Fig. 3 and discussed at col. 4, lines 6-11, describes engaging posts (113) which are directly formed on the holder (104). Kim does not disclose tabs forming an **obtuse angle** with a portion of a stem to which the tabs are attached as recited in amended independent Claim 1. Accordingly, no reasonable combination of Wang and Kim would include all of the features of amended Claim 1 or Claim 21 dependent therefrom.

Regarding the rejection of Claims 14, 15, and 20 as obvious over Holloway in view of Wang, Applicant respectfully submits that, as discussed above, neither Holloway nor Wang teaches or suggests all of the features of amended independent Claim 1. Accordingly, Applicant respectfully submits that Claims 14, 15, and 20 patentably distinguish over any reasonable combination of Holloway and Wang for at least the same reasons as amended independent Claim 1 does.

Regarding the rejection of Claim 21 as obvious over Holloway in view of Kim, that rejection is respectfully traversed by the present response. Claim 21 depends from amended Claim 1 and patentably distinguishes over Holloway for at least the same reasons Holloway does.

As discussed above, Kim is devoid of tabs forming an **obtuse angle** with a portion of a stem to which the tabs are attached as recited in amended independent Claim 1. Therefore, Kim fails to remedy the deficiencies of Holloway discussed above regarding the rejection of

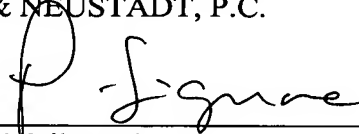
independent Claim 1. Accordingly, Applicant respectfully submits that dependent Claim 21 patentably distinguishes over any reasonable combination of the cited references for at least the reasons discussed above.

For the foregoing reasons, it is respectfully submitted that this application is now in condition for allowance. A Notice of Allowance for Claims 1-58 is earnestly solicited.

Should Examiner Le deem that any further action is necessary to place this application in even better form for allowance, Examiner Le is encouraged to contact Applicant's undersigned representative at the below-listed telephone number.

Respectfully submitted,

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